

Entered on Docket

July 27, 2010

GLORIA L. FRANKLIN, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA



Signed: July 27, 2010

EDWARD D. JELLEN  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re  
DAVID HUETE,

Case No. 10-42426 EDJ  
Chapter 7

Debtor. /

RAYLENE HUETE,

Adv. No. 10-04137 AJ

Plaintiff,

vs.

DAVID HUETE,

Defendant. /

MEMORANDUM

The above-captioned adversary proceeding came on for status conference July 26, 2010. Both parties appeared, without counsel. Plaintiff Raylene Huete ("Raylene") contends that David Huete, the above-named debtor ("David"), owes her a property equalization payment by virtue of certain orders entered by the Contra Costa Superior Court in Case No. D01-03339 entitled Huete v. Huete. By this adversary proceeding, she requests this court to liquidate the

Memorandum

1 amount of such property equalization payment, and to determine that  
2 the resulting debt is nondischargeable herein pursuant to Bankruptcy  
3 Code § 523(a)(15).<sup>1</sup>

4 David contends that property settlement debts of the type that  
5 are at issue herein are dischargeable, citing Marriage of Lynn, 101  
6 Cal. App. 4th 120, 123 Cal. Rptr. 2d 611 (2002).

7 The language in Lynn upon which David relies is outdated.  
8 Since the enactment of the Bankruptcy Abuse Prevention and Consumer  
9 Protection Act of 2005 ("BAPCPA"), effective October 17, 2005, most  
10 non-support debts (as well as most support debts, see Bankruptcy  
11 Code § 523(a)(5)) incurred in connection with a divorce proceeding  
12 are not dischargeable in a bankruptcy case. Bankruptcy Code  
13 § 523(a)(15).

14 As to the appropriate forum, since the enactment of BAPCPA, the  
15 bankruptcy court and any non-bankruptcy forum of competent  
16 jurisdiction exercise concurrent jurisdiction as to actions grounded  
17

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18       <sup>1</sup>Bankruptcy Code § 523(a)(15), in effect for bankruptcy  
19 cases filed on or after October 17, 2005, provides:

20       (a) A discharge under section 727 . . . of this title  
21 does not discharge an individual debtor from any debt--  
22       . . .

23       (15) to a spouse, former spouse, or child of the debtor  
24 and not of the kind described in paragraph (5) that is  
25 incurred by the debtor in the course of a divorce or  
separation or in connection with a separation  
agreement, divorce decree or other order of a court of  
record, or a determination made in accordance with  
State or territorial law by a governmental unit.

1 on Bankruptcy Code § 523(a)(15). Bankruptcy Code § 523(c); 28  
2 U.S.C. § 1334(b).

3 Here, the court believes that this matter is best heard by the  
4 Contra Costa Superior Court, State of California. This is so  
5 because state law issues predominate. Also, the nature and extent  
6 of prior rulings by the Contra Costa Superior Court may be at issue.  
7 The outcome will not impact the administration of David's bankruptcy  
8 estate, nor will such administration be delayed by this court's  
9 deferral to the Superior Court. See In re Tucson Estates, Inc., 912  
10 F.2d 1162 (9th Cir. 1990).

11 Accordingly, this court will issue its order abstaining from  
12 hearing this adversary proceeding, and vacating the automatic stay  
13 to permit Raylene to seek relief in the Superior Court.

\*\*\* END OF MEMORANDUM \*\*\*

COURT SERVICE LIST

3 Raylene Huete  
32312 Deborah Dr.  
4 Union City, CA 94587

5 David Alonzo Huete  
409 13th St. 10th Floor  
6 Oakland, CA 94612

Memorandum